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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 DAVID ERNESTO MACKEY,

12 Petitioner,

13 v.

14 BRANDON PRICE, et al.,

15 Respondents.  
16

No. 1:21-cv-00791-SKO (HC)

**ORDER DIRECTING CLERK OF COURT  
TO ASSIGN DISTRICT JUDGE**

**FINDINGS AND RECOMMENDATION  
TO SUMMARILY DISMISS PETITION**

**[TWENTY-ONE DAY OBJECTION  
DEADLINE]**

17 Petitioner is a state prisoner proceeding *pro se* and *in forma pauperis* with a petition for  
18 writ of habeas corpus pursuant to 28 U.S.C. § 2254. He filed the instant petition on May 17,  
19 2021. The petition does not challenge the underlying conviction; it instead presents claims  
20 concerning the conditions of his confinement. For this reason, the Court will recommend it be  
21 DISMISSED.

22 **DISCUSSION**

23 A. Preliminary Review of Petition

24 Rule 4 of the Rules Governing Section 2254 Cases allows a district court to dismiss a  
25 petition if it “plainly appears from the petition and any attached exhibits that the petitioner is not  
26 entitled to relief in the district court . . . .” Rule 4 of the Rules Governing Section 2254 Cases.  
27 The Advisory Committee Notes to Rule 8 indicate that the court may dismiss a petition for writ of  
28 habeas corpus, either on its own motion under Rule 4, pursuant to the respondent’s motion to

1 dismiss, or after an answer to the petition has been filed. Herbst v. Cook, 260 F.3d 1039 (9th Cir.  
2 2001).

3 B. Civil Rights Claims

4 Petitioner does not challenge his conviction. He contends that prison staff have  
5 wrongfully determined he is not compliant in taking his medication. He further requests he be  
6 immediately released from custody because he is at high risk for severe illness due to the  
7 COVID-19 pandemic.

8 A habeas corpus petition is the correct method for a prisoner to challenge the “legality or  
9 duration” of his confinement. Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991) (quoting Preiser  
10 v. Rodriguez, 411 U.S. 475, 485 (1973)). In contrast, a civil rights action pursuant to 42 U.S.C. §  
11 1983 is the proper method for a prisoner to challenge the conditions of confinement. McCarthy v.  
12 Bronson, 500 U.S. 136, 141-42 (1991); Preiser, 411 U.S. at 499. Petitioner’s civil rights claims  
13 are not cognizable in a federal habeas action and must be dismissed. Petitioner must seek relief  
14 for his complaints by way of a civil rights action. Bowman v. California, No. EDCV 19-00184  
15 RGK (RAO), 2019 WL 4740538, at \*1-2 (C.D. Cal. June 26, 2019) (Petitioner’s request for  
16 release from custody based on jail conditions through a habeas petition was dismissed for failure  
17 to state a cognizable federal claim. Claims relating to conditions of confinement are more  
18 appropriately brought under 42 U.S.C. § 1983 even though petitioner also requested release from  
19 custody as a form of relief).

20 In Nettles v. Grounds, 830 F.3d 922, 936 (9th Cir. 2016), the Ninth Circuit held that a  
21 district court has the discretion to construe a habeas petition as a civil rights action under § 1983.  
22 However, recharacterization is appropriate only if it is “amenable to conversion on its face,  
23 meaning that it names the correct defendants and seeks the correct relief,” and only after the  
24 petitioner is warned of the consequences of conversion and is provided an opportunity to  
25 withdraw or amend the petition. Id. Here, the Court does not find recharacterization to be  
26 appropriate. Petitioner does not name the proper defendants and the claims are not amenable to  
27 conversion on their face. Accordingly, the Court should not exercise its discretion to  
28 recharacterize the action.

1 The Court will, therefore, recommend that the action be dismissed and the Clerk of Court  
2 be directed to send Petitioner a blank civil rights complaint.

3 **ORDER**

4 IT IS HEREBY ORDERED that the Clerk of Court is DIRECTED to assign a District  
5 Judge to the case.

6 **RECOMMENDATION**

7 Based on the foregoing, the Court HEREBY RECOMMENDS that the habeas corpus  
8 petition be DISMISSED and the Clerk of Court be DIRECTED to provide Petitioner with a blank  
9 civil rights complaint form.

10 This Findings and Recommendation is submitted to the United States District Court Judge  
11 assigned to this case, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 304  
12 of the Local Rules of Practice for the United States District Court, Eastern District of California.  
13 Within twenty-one (21) days after being served with a copy, Petitioner may file written objections  
14 with the Court. Such a document should be captioned "Objections to Magistrate Judge's Findings  
15 and Recommendation." The Court will then review the Magistrate Judge's ruling pursuant to 28  
16 U.S.C. § 636 (b)(1)(C). Failure to file objections within the specified time may waive the right to  
17 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9<sup>th</sup> Cir. 1991).

18  
19 IT IS SO ORDERED.

20 Dated: May 19, 2021

/s/ Sheila K. Olerto  
UNITED STATES MAGISTRATE JUDGE